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7 **UNITED STATES BANKRUPTCY COURT, DISTRICT OF ARIZONA**

8 In re:

9 IRINA V. LOSACKER,

10 Debtor.

11
12 IRINA V. LOSACKER

13 Plaintiff,

14 vs.

15 JPMORGAN CHASE BANK, NA

16 Defendant.
17

No. 2:09-bk-01979 RJH

Chapter 13 Proceeding

**COMPLAINT PURSUANT TO 11 U.S.C.
SECTION 506(a) AND BANKRUPTCY
RULE 3012 TO DETERMINE THE
VALUE OF SECURITY AND
DEFENDANT'S ALLOWED CLAIM**

Adversary No. 2:09-ap-01671 RJH

18 IRINA V. LOSACKER, Debtor and Plaintiff herein, by and through her undersigned
19 counsel, for her Complaint against Defendant, alleges as follows:

20 1. The Plaintiff alleges that this a core proceeding as defined by Section 157(b)(2) of
21 Title 28 of the United States Code in that it concerns claims and matters arising out of the administration
22 of this bankruptcy case and rights duly established under Title 11 of the United States Code and other
23 applicable federal law.

24 2. The Plaintiff further alleges that this Court has both personal and subject matter
25 jurisdiction to hear this case pursuant to Section 1334 of Title 28 of the United States Code, Section
26 157(b)(2) of Title 28 of the United States Code.

27 3. This adversary proceeding arises under Debtor's administrative case number 2:09-
28

1 bk-01979 RJH, filed pursuant to Chapter 13 of the United States Bankruptcy Code on February 5,
2 2009, which is currently pending in this Court.

3 4. On the petition date, Plaintiff was fee owner of real property located at 8028 N. 32nd
4 Avenue, Phoenix AZ 85051, and legally described as:

5 LOT 149 OF NORTHERN MANOR UNIT TWO AMENDED
6 ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE
7 COUNTY RECORDER OF MARICOPA COUNTY ARIZONA
8 RECORDED IN BOOK 205 OF MAPS PAGE 13.

9 5. On the date of the petition, Plaintiff was indebted to National City Bank under a Note
10 and first position Deed of Trustee in the approximate principal amount of \$121,136.00.

11 6. On the date of the petition, Plaintiff was indebted to JPMorgan Chase Bank, NA
12 under a Note and second position Deed of Trust in the approximate amount of \$35,186.00. This Deed
13 of Trust was recorded at the Maricopa County Recorder's office on July 27, 2007 as instrument number
14 20070851211.

15 7. Plaintiff alleges that on the date of the Petition, the value of the property was
16 \$90,000.00.

17 8. Plaintiff alleges that there is no equity in the property above the first lien of National
18 City Bank and, therefore, Defendant has no secured interest for the loan secured by the second deed
19 of trust on the property.

20 9. Pursuant to 11 U.S.C. Section 506(a), Defendant has no allowable secured claim
21 regarding the second deed of trust loan on the property.

22 10. Any timely filed claim of Defendant for the second mortgage loan is allowable only
23 as an unsecured claim and to the extent that no such claim is filed the Defendant has no claim against
24 this estate.

25 WHEREFORE, Plaintiff respectfully prays of the Court as follows:

26 1. That the Defendant's deed of trust encumbering the real property owned by Debtor
27 described herein shall be and is avoided upon entry of Discharge in Debtor's Chapter 13 case.

28 2. That the Defendant's claim is an unsecured claim.

1 3. That upon entry of Debtor's discharge, the Court's Order may be recorded with the
2 appropriate County Recorder as a release and reconveyance of Defendant's deed of trust.

3 4. For such other and further relief as the Court may deem just and proper.

4 RESPECTFULLY SUBMITTED this 14th day of December, 2009.

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6 CHARLES M. SABO, P.C.

7 By /s/CMS ABN 006200
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